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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 ANNIE D. ELLISON,

8 Plaintiff(s),

Case No. 2:19-CV-1137 JCM (DJA)

9 v.

ORDER

10 AMERICAN HOMES 4 RENT, LP,

11 Defendant(s).

12
13 Presently before the court is defendant American Homes 4Rent's ("AH4R") motion to
14 compel arbitration. (ECF No. 23). Plaintiff Annie Ellison filed a response (ECF No. 28), to
15 which AH4R replied (ECF No. 31).

16 Also before the court is AH4R's motion to dismiss, or in the alternative, stay. (ECF No.
17 23). Ellison filed a response (ECF No. 28), to which AH4R replied (ECF No. 31).

18 **I. Background**

19 The instant action arises from a disagreement over the validity of a contract between the
20 parties to arbitrate employment-related disputes. (ECF Nos. 23, 28). The parties allege the
21 following:

22 On April 10, 2016, Ellison submitted a signed application for employment to AH4R.
23 (ECF No. 23). The application included an agreement to arbitrate "any controversy, dispute, or
24 claim" between an employee of AH4R and AH4R or its affiliates/subsidiaries/etc. (ECF No. 23-
25 3). AH4R subsequently sent an offer letter to Ellison, which she accepted on May 3, 2016.
26 (ECF Nos. 23, 28). The offer letter stated that "this letter is not intended to be a contract and
27 your employment is at-will" and that AH4R "uses arbitration to settle disputes and all employees
28 are required to sign our arbitration agreement upon hire." (ECF No. 23-4).

1 On May 22, 2016, Ellison electronically signed AH4R's arbitration agreement ("2016
2 arbitration agreement") through the AH4R University program, a computer-based training
3 system. (ECF Nos. 23-5, 28). The 2016 arbitration agreement provides, in relevant part, that
4 "Employee and Company agree that any controversy or claim arising out of or relating to
5 Employee's employment with Company, shall be exclusively and finally settled by arbitration,"
6 and that "[t]his arbitration provision includes (but is not limited to) all claims" for unlawful
7 discrimination (including race, color, religion, sex, and national origin). (ECF Nos. 23-5). The
8 2016 arbitration agreement also requires any arbitration proceedings to be held in Los Angeles,
9 California and to be conducted pursuant to California Code of Civil Procedure 1283.05. *Id.*

10 On May 31, 2016, Ellison commenced employment with AH4R as a staff attorney. (ECF
11 Nos. 23, 28). In April 2017, AH4R issued a revised arbitration agreement ("2017 arbitration
12 agreement") and employee handbook. (ECF Nos. 23, 28). The 2017 arbitration agreement
13 mirrors its 2016 counterpart in many regards—including the requirement that disputes related to
14 unlawful discrimination be arbitrated—but there are also several revised terms. (ECF No. 23-9).
15 Notably, the 2017 arbitration agreement's location provision was revised to require any
16 arbitration to be conducted "in or near the city or town where Employee's employment services
17 were performed, at the Company headquarters, or at any other location mutually agreed upon by
18 Employee and Company or set by the AAA or arbitrator." *Id.*

19 The employee handbook references the 2017 arbitration agreement as follows: "At time
20 of hire, you will be required to sign and return an arbitration agreement as a condition of
21 employment." (ECF No. 28-4). The employee handbook also states that AH4R "reserves the
22 right to change or revise policies, procedures, and benefits (other than the employment-at-will
23 provision) without prior notice whenever we determine that such action is warranted" and that
24 "[t]his handbook replaces all earlier handbooks and supersedes all prior or inconsistent policies,
25 practices, and procedures." (ECF No. 28).

26 In order to receive a salary increase and monetary bonus, Ellison was required to
27 acknowledge the 2017 arbitration agreement through the AH4R University program by January
28 5, 2018. (ECF No. 23, 23-6). Although Ellison disputes that she signed the 2017 arbitration

1 agreement (ECF No. 28), AH4R has submitted a “course activity summary” from the AH4R
2 University program indicating that Ellison’s unique login was used on January 5, 2018 to
3 acknowledge the 2017 arbitration agreement (ECF No. 23-11).

4 Ellison initiated this action on June 28, 2019. (ECF No. 1). On July 10, 2019, Ellison
5 filed an amended complaint against AH4R alleging two causes of action: (1) race discrimination
6 in violation of Title VII and 42 U.S.C. § 1981; and (2) retaliatory discharge in violation of Title
7 VII and 42 U.S.C. § 1981. (ECF No. 9).

8 Now, AH4R moves to compel arbitration of Ellison’s claims. (ECF No. 23). AH4R also
9 moves to dismiss, or in the alternative, stay Ellison’s claims pending resolution of the arbitration.
10 *Id.*

11 **II. Legal Standard**

12 The Federal Arbitration Act (“FAA”) provides for the enforcement of arbitration
13 agreements in any contract affecting interstate commerce. 9 U.S.C. § 2; *AT&T Mobility LLC v.*
14 *Concepcion*, 563 U.S. 333, 339 (2011). A party to an arbitration agreement can invoke his or her
15 rights under the FAA by petitioning federal courts to direct that “arbitration proceed in the
16 manner provided for in such agreement.” 9 U.S.C. § 4. When courts grant a petition to compel
17 arbitration, the FAA requires stay of litigation “until such arbitration has been had[.]” *Id.* at § 3.

18 The FAA embodies a clear policy in favor of arbitration. *AT&T Mobility*, 563 U.S. at
19 339. Courts must rigorously enforce arbitration agreements. *Hall Street Assoc., L.L.C. v. Mattel,*
20 *Inc.*, 552 U.S. 576, 582 (2008). “[A]ny doubts concerning the scope of arbitrable issues should
21 be resolved in favor of arbitration.” *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir.
22 1999) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).
23 The FAA leaves no place for courts to exercise discretion, but instead mandates courts to enforce
24 arbitration agreements. *See Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 218 (1985).

25 However, arbitration is a “matter of contract” and the FAA does not require a party to
26 arbitrate “any dispute which he has not agreed so to submit.” *Howsam v. Dean Witter Reynolds,*
27 *Inc.*, 537 U.S. 79 (2002) (quotes and citation omitted). When determining whether a party
28 should be compelled to arbitrate claims: courts engage in a two-step process. *Chiron Corp. v.*

1 *Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). The court must determine: (1)
2 whether a valid agreement to arbitrate exists, and if it does; (2) whether the agreement
3 encompasses the dispute at issue. *Id.*

4 **III. Discussion**

5 AH4R argues that Ellison agreed, on at least five separate occasions, to the terms of the
6 arbitration agreement, which requires her to arbitrate her current claims against AH4R. (ECF
7 No. 23). In particular, AH4R contends that Ellison acknowledged the 2017 arbitration
8 agreement through the AH4R University program, and that the 2017 arbitration agreement is
9 enforceable under Nevada law. *Id.*

10 Ellison responds that the 2016 arbitration agreement “is the only agreement [she]
11 reviewed, executed, or otherwise acknowledged after accepting [AH4R’s] offer of employment.”
12 (ECF No. 28). Ellison further responds that the 2017 arbitration agreement superseded the 2016
13 arbitration agreement, such that only the 2017 arbitration agreement remains operative. *Id.* In
14 addition, Ellison contends that the 2017 arbitration agreement is illusory, and thus unenforceable
15 under Nevada law. *Id.*

16 As a preliminary matter, the court finds that Ellison acknowledged the 2017 arbitration
17 agreement. The entirety of Ellison’s claim to the contrary relies on her affirmation that “she did
18 not access, accept, acknowledge or agree to” AH4R’s 2017 arbitration agreement. (ECF No.
19 28). The court is not persuaded by Ellison’s affirmation. AH4R has provided a “course activity
20 summary” from the AH4R University program indicating that Ellison’s unique login was used to
21 acknowledge the 2017 arbitration agreement (ECF No. 23-11), and Ellison has provided no
22 colorable argument or evidence to the contrary.

23 Accordingly, Ellison is bound by the terms of the 2017 arbitration agreement unless that
24 agreement is invalid or does not encompass Ellison’s claims. *See Chiron Corp.*, 207 F.3d at
25 1130. The court will address each issue in turn.

26 *a. The 2017 arbitration agreement is valid and enforceable*

27 Ellison contends that the 2017 arbitration agreement is unenforceable based on the
28 language of the employee handbook. (ECF No. 28). First, Ellison argues that the employee

1 handbook states that “[t]his handbook replaces all earlier handbooks and supersedes all prior or
2 inconsistent policies, practices, and procedures,” such that the 2016 arbitration agreement was
3 superseded by the 2017 arbitration agreement. *Id.* Second, Ellison argues that the employee
4 handbook states that AH4R “reserves the right to change or revise policies, procedures, and
5 benefits (other than the employment-at-will provision) without prior notice whenever we
6 determine that such action is warranted,” such that the 2017 arbitration agreement is illusory and
7 thus unenforceable. *Id.*

8 Ellison also argues that the 2017 arbitration agreement is unenforceable because there
9 was no meeting of the minds as to the new revisions. *Id.* Specifically, Ellison points to the
10 revised arbitration location provision, which provides that any arbitration must be conducted “in
11 or near the city or town where Employee's employment services were performed, at the
12 Company headquarters, or at any other location mutually agreed upon by Employee and
13 Company or set by the AAA or arbitrator.” (ECF No. 23-9).

14 Though the employee handbook purportedly reserves for AH4R the right to unilaterally
15 revise the 2017 arbitration agreement, the agreement itself makes no mention of any right to
16 change its terms. (*See* ECF No. 23-9). There is also no intent in the 2017 arbitration agreement
17 to incorporate the employee handbook by reference, as the only mention of the employee
18 handbook in the agreement is a header on the agreement’s first page stating: “DURING YOUR
19 EMPLOYEE ORIENTATION/ANNUAL HANDBOOK REVIEW (AS APPLICABLE), YOU
20 WILL BE ASKED TO READ AND ACKNOWLEDGE [the 2017 arbitration agreement]
21 THROUGH AH4R UNIVERSITY.” *Id.*

22 Further, the employee handbook itself contains only a single reference to the agreement.
23 (*See* ECF No. 28-4 (“At time of hire, you will be required to sign and return an arbitration
24 agreement as a condition of employment.”)). The employee handbook also expressly states that
25 “the contents of this handbook are in no way intended to create an employment contract.” *Id.*

26 In total, there has been no showing that the 2017 arbitration agreement incorporated the
27 employee handbook by reference and there has been no showing that the employee handbook
28 alone constitutes a separate contract. The 2017 arbitration agreement is thus unaffected by the

1 employee handbook, such that AH4R retained no right in the 2017 arbitration agreement to
2 unilaterally modify its terms. Accordingly, the court finds that the 2017 arbitration agreement is
3 not illusory.

4 Ellison's argument that there was no meeting of the minds as to the formation of the 2017
5 arbitration agreement is equally unavailing. The "course activity summary" from the AH4R
6 University program indicates that Ellison opened and observed the 2017 arbitration agreement
7 and assented to its terms. (ECF No. 23-11). Aside from the now-rejected contention that she did
8 not acknowledge the 2017 arbitration agreement, Ellison provides no additional argument to
9 refute her acknowledgement of, and assent to, the revised terms of the agreement.

10 The court therefore finds that the 2017 arbitration agreement constitutes a valid and
11 enforceable arbitration contract.

12 *b. The 2017 arbitration agreement encompasses all of Ellison's claims against AH4R*

13 The 2017 arbitration agreement provides that the following claims must be submitted to
14 arbitration:

15 The claims which are to be arbitrated include, but are not limited to *any claim*
16 *arising out of or relating to this Agreement or the employment relationship*
17 *between Employee and the Company*, claims for wages and other compensation,
18 claims for breach of contract (express or implied), claims for violation of public
19 policy, wrongful termination, tort claims, *claims for unlawful discrimination*
20 *and/or harassment* (including, but not limited to, race, religious creed, color,
21 national origin, ancestry, physical disability, mental disability, gender identity or
22 expression, medical condition, marital status, age, pregnancy, sex or sexual
23 orientation, veteran status, veteran spousal status, gender identity and expression,
24 breast feeding, genetic information, or genetic characteristic) to the extent allowed
25 by law, and claims for violation of any federal, state, or other government law,
26 statute, regulation, or ordinance.

27 (ECF No. 23-9) (emphasis added). Ellison's race discrimination and retaliatory discharge claims
28 both fall within the clear and unambiguous language of this provision, as both claims "aris[e] out
of or relat[e] to this Agreement or the employment relationship between Employee and the
Company." *Id.*

The court therefore finds that Ellison's claims must be submitted to arbitration. The
court will accordingly grant AH4R's motion to compel arbitration. The court will also stay all
litigation in this action in accordance with 9 U.S.C. § 3.

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that AH4R's motion to
4 compel (ECF No. 23) be, and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that AH4R's motion to dismiss, or in the alternative, stay
6 (ECF No. 23) be, and the same hereby is, GRANTED, consistent with the foregoing.

7 IT IS FURTHER ORDERED that this action be, and the same hereby is, STAYED
8 pending the close of arbitration.

9 IT IS FURTHER ORDERED that the parties shall file a status report six months from the
10 date of this order, and every six months thereafter, briefly indicating the progress of the
11 arbitration.

12 DATED December 27, 2019.

13 
14 UNITED STATES DISTRICT JUDGE